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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CP

DEPUTY

10 Attorneys for Defendant  
11 United States of America

12 ALVIN HENNINGTON, JR.,

13 Plaintiff,

14 v.

15 FEDERAL BUREAU OF  
16 INVESTIGATION,

17 Defendant.

Case No. '08 CV 1033 BTM AJB

18 EX PARTE APPLICATION FOR AN  
19 ORDER ESTABLISHING TIME FOR  
20 UNITED STATES TO  
21 RESPOND TO COMPLAINT

22 Pursuant to Fed. R. Civ. P. 6(b)(1), it is requested that the Court issue an order specifying the  
23 time for the United States, by and through the Federal Bureau of Investigation ("FBI"), to respond to the  
24 operative Complaint filed in this action, which was removed from state court on June 10, 2008.<sup>1/</sup> This  
25 action arises under the Federal Tort Claims Act, Title 28, U.S.C. §§ 1346(b), 2671, et. seq. Ordinarily,  
26 in an action originally filed in United States District Court against the United States or its agencies, the  
27 time for response by the United States is set forth in Fed R. Civ. P. 12(a). That rule affords "60 days  
28 after service on the United States attorney" within which to respond to the complaint, as opposed to the  
29 20 days generally afforded to non-federal defendants under the Rule.

30 After removal of a state court action to the district court, a defendant ordinarily needs to respond  
31 within the longest of the following periods:

32

33

34 <sup>1/</sup>Such an order is authorized under Federal Rule of Civil Procedure 6(b)(1), which provides  
35 discretionary authority to enlarge time "with or without motion or notice. . ." Authority to enlarge time  
36 naturally encompasses the power to designate the proper time for response to a complaint.

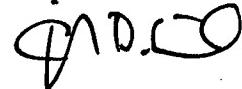
- 1                   (A) 20 days after receiving – through service or otherwise – a copy of the initial
- 2                   pleading setting forth the claim for relief;
- 3                   (B) 20 days after being served with the summons for an initial pleading on file at the
- 4                   time of service; or
- 5                   (C) 5 days after the notice of removal is filed.

6 Fed. R. Civ. P. 81(c).

7                   Rule 81(c) does not distinguish between cases brought against federal entities and those brought  
8 against non-federal defendants. Accordingly, in order to clarify the time to respond to the Plaintiff's  
9 Complaint, and to ensure that the FBI and the United States will be able to utilize the 60 days provided  
10 by Rule 12 to prepare a response, it is requested that the Court issue an order establishing that the FBI  
11 and the United States shall have 60 days from the date of removal to respond to Plaintiff's operative  
12 Complaint.

13                   Respectfully Submitted,

14                   Dated: June 10, 2008                   KAREN P. HEWITT  
15   United States Attorney



16                   CHRISTOPHER B. LATHAM  
17                   Assistant U.S. Attorney  
18                   Attorneys for Defendant  
19                   United States of America